ST 99-27
Tax Type: **Sales Tax**
Issue: **Reasonable Cause on Application of Penalties**

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DEPARTMENT OF REVENUE
STATE OF ILLINOIS
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE	) 99 ST 0000
STATE OF ILLINOIS	) 0000-0000
	) NOA SB 9900000000000
v.	)
	) Mimi Brin
"MAMA'S RESTAURANT"	) Administrative Law Judge
	)
Taxpayer	)

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RECOMMENDATION FOR DISPOSITION

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<u>**Synopsis:**</u>

This matter comes on for hearing pursuant to taxpayer's, "Mama's Restaurant" ("Taxpayer" or "Mama's") protest of a Notice of Assessment SB 9900000000000 ("NOA") issued by the Illinois Department of Revenue ("Department") on April 22, 1999. The NOA assessed a late filing penalty, a late payment penalty and interest on taxpayer's February 1999 return, which was due on March 22, but which carried a postmark of March 23. Taxpayer's position is that the return was placed into the U.S. Postal Service mailbox on March 22, but was incorrectly postmarked March 23 as a result of a U.S. Postal Service error.

Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor or the Department, and in support of this recommendation, I make the following findings of fact and conclusions of law:

Findings of Fact:

1.   Taxpayer's Sales and Use Tax Return ("ST-1") for the month of February 1999 was postmarked by the U.S. Postal Service on March 23, 1999. Department Gr. Ex. 1

2.   The Department assessed taxpayer a tax of $75.00 (disallowance of the prompt filing and payment discount taken by taxpayer), a late filing penalty of $86.00 and a late payment penalty of $862.00, along with statutorily accrued interest computed through June 14, 1999, as a result of the late mailing of the return. Id.

Conclusions of Law:

The Retailers' Occupation Tax Act, 35 **ILCS** 120/1 *et seq*. ("ROTA" or "ROT") provides that retailers shall file their ROT returns, or ST-1s on or before the twentieth day of each calendar month following the month reported. Id. at 120/3 In this matter, taxpayer's February 1999 ST-1 was due to the Department on or before March 22.[1] Department Gr. Ex. No. 1 (ST-1) "Mama's" February return and payment arrived after the 22nd, with a U. S. Postal Service postmark on its envelope of March 23, thereby one day late. As a result, the Department disallowed the prompt filing and payment discount of $75.00 taken by the taxpayer, and further, assessed late filing and payment penalties

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[1] March 20, 1999 fell on a Saturday. Therefore, the ST-1, with payment, was due on the next business day, Monday, March 22. Ill. Admin. Code, ch. I, sec. 130.1205

pursuant to section 3-3 of the Uniform Penalty and Interest Act, 35 **ILCS** 735/3-1 *et seq.* ("UPIA").

Illinois statute and Department regulation provide the method for determining the date that a required filing is made. Specifically, section 1.25 of the Statute on Statutes states, in pertinent part:

> Unless An Act otherwise specifically provides, any writing of any kind or description required or authorized to be filed with, and any payment of any kind or description required or authorized to be paid to, the State or any political subdivision thereof, by the laws of this State:
> (1) if transmitted through the United States mail, shall be deemed filed with or received by the State or political subdivision on the date shown by the post office cancellation mark stamped upon the envelope or other wrapper containing it;

5 **ILCS** 70/1.25 (1)

In furtherance of this provision, Department regulation 130.1201 states:

> a) Any report, claim, tax return, statement of [sic] other document required to be filed with or any payment made to the Department of Revenue, which document or payment is transmitted through the United States mail, will be deemed to have been filed with and received by the Department on the date shown by the post office cancellation mark stamped upon the envelop or other appropriate wrapper containing it.

86 Ill. Admin. Code, ch. I, sec. 130.1201

In the instant matter, the postmark containing taxpayer's February ST-1 shows a clear postmark of March 23. However, taxpayer's owner, Mr. "John Doe", testified that he placed the return into the U.S. Post Office mailbox on March 22 (Tr. p. 11), and the postmark was, therefore, in error (Tr. pp. 11-12). He further testified that the postal employee who picks up taxpayer's mail acknowledged that such errors are possible (Tr. pp. 10, 13-14), however, he was unable to get anyone at the Post Office to give him a letter to this effect (Tr. p. 11)

Although Mr. "Doe" suggests that this is a matter to be resolved upon a determination of his credibility, this is not the case. The Department correctly directs attention to the case of <u>In the Matter of the Application of the County Collector</u>, 265 Ill. App.3d 485 (1st Dist. 1994). In that case, respondent, Klopfer, testified that he brought redemption documents and payment to a Chicago U.S. Post Office on August 14, the last day for the redemption of a certain property, asking the clerk there to postmark the envelope and to mail it. The envelope showed the date of August 16. The tax purchaser brought an action to expunge the redemption based upon the late filing of the documents whereat Klopfer testified that based upon his timely actions, the postmark was in error. There was also competent evidence presented that Chicago post offices suffered a 2% error rate in postmarking.

The circuit court allowed the redemption and found, *inter alia*, Klopfer's testimony credible, and applied subparagraph (2) of section 1.25 of the Statute on Statutes, even though the postmark was clear. The appellate court reversed, stating, in part that:

> Credible testimony that a document was mailed on a certain date should be allowed to support an argument that a postmark is erroneous. We believe, however, that the testimony of Klopfer, standing alone, fell short of the amount of proof needed to find a postmark erroneous.

265 Ill. App.3d at 490

Recognizing that the pertinent statute also addresses those instances wherein a postmark is not legible or documents averred to have been mailed are not received (5 ILCS 70/1.25 (2)) that court continued by providing:

> We think it is plain that the purpose of the mailing statute is to establish a clear rule and reliable standard of proof regarding when documents will be deemed filed with the State. In most

cases, the postmark represents a readily provable fact. To prove
a date of mailing, however, testimony and corroborating evidence
may have to be elicited. It seems clear, then, that the statute was
intended to prevent the necessity of hearing evidence when the
postmark is available and legible.

Id. at 491

In this instant matter, the postmark on the envelope is available and legible. In addition, unlike In the Matter of the Application of the County Collector, there was no legally competent evidence of post office error at taxpayer's location. Thus, just as in that case, the credibility of Mr. "Doe" is not the issue, nor can it legally be controlling in my determination.

Taxpayer also raises its concern that the amount of the penalty is excessive. However, the legislature enacted the penalties and taxpayer's concern is appropriately addressed to that body, as the Department cannot contravene the UPIA in making its penalty assessments.

Both Illinois statute and Department regulation address the very issue in this cause. It is because of the nature of the activity, that is the orderly and consistent administration of the tax laws, that these laws must be applied. Whereas I do not suggest, nor can I find that Mr. "Doe" was not credible, I must apply the law to him as uniformly as I apply it all other taxpayers presenting the same issue.

Wherefore, for the reasons stated above, I recommend that the assessment of tax, penalties and statutory interest be finalized against "Mama's Restaurant".[2]

12/9/99   _____
                                                 Mimi Brin, Administrative Law Judge

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[2] The UPIA waiver to these penalties, based upon non-fraudulent failure to file (35 **ILCS** 735/3-3) does not apply herein as taxpayer concedes that it had a late ST-1 filing within the past two years. Tr. p. 12